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IN THE

Supreme Court of the United States

October Term, 1965
No. 417

STATE OF CALIFORNIA,

Petitioner,

vs.

JAMES EDWARD CURRY, WILLIAM LOUIS JAMES,

Respondents.

Supplement to Petition for Writ of Certiorari to the District Court of Appeal, Second Appellate District, Division Two, of the State of California.

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The State of California respectfully requests permission to file this supplement to its petition for a writ of certiorari, heretofore filed.

The reason for our request is that important cases have been decided or come to our attention since the filing of our petition which deserve the consideration of this Court.

The petition focuses on the admissibility of voluntary confessions, obtained without coercion, threats, brutality, or other taint, but with the purported defect that the persons who made the confessions were not advised of their right to have attorney or to remain silent and did not waive those rights.

In our petition (at pp. 8-9) we alluded to the split of authority that has developed among the many

eminent courts that have interpreted *Escobedo v. Illinois*, 378 U.S. 478. Now it is our duty to draw the attention of this Court to the deepening disagreements over this constitutional question of first importance, the lack of uniformity of interpretation that has been given to this Court's holding in *Escobedo*, and to the tensions that have been developed between various jurisdictions, state and federal.

See:

Otney v. United States, 340 F. 2d 696, 702 (10 Cir. 1965);

State v. Shook, 404 P. 2d 724, 726-27 (CA, Ariz. 1965);

Commonwealth of Pennsylvania v. Maroney, 348 F. 2d 22, 31 (3 Cir. 1965);

State v. Daley, 211 A. 2d 354, 357, 45 N.J. 68 (1965);

Montgomery v. State, 176 So. 2d 331, 335 (Fla. 1965);

Powers v. State, 402 P. 2d 328, 332, 194 Kan. 820 (1965).

See too the dissenting opinion of Justice McComb in *People v. Roberts*, 63 A.C. 79, 89-97.

Comm. v. Ladetto, 207 N.E. 2d 536, 540 (Mass. 1965);

Comm. v. Roy, 207 N.E. 2d 284, 288 (Kan. 1965).

It may well be that the need for decision by this Court was best illuminated by a trial judge in *People*

v. Jackson, 262 N.Y.S. 2d 907, 918-21, 46 Misc. 2d 742 (June 7, 1965):

> "Notwithstanding the recent decision of the Third Circuit Court of Appeals, this court will follow the decisional law as pronounced in our State Court of Appeals. Much controversy has arisen over the methods of law enforcement authorities in the apprehension of persons accused of crime and the procedures now prevalent in procuring inculpatory statements from them. One such critical question that seems to have caused much judicial confusion is the diverse views expressed by the judiciary as to the effect of failure to warn an accused of right to aid of counsel, and of his privilege against self-incrimination. . . .
>
> "The court prefers to follow the opinion of the New York Court of Appeals rather than adopt the ruling of the Third Circuit Court of Appeals, unless upon a review and a contrary determination has been made by the United States Supreme Court. Surely there is need for clarification of the problem herein presented. Unquestionably a final determination of this issue is of great concern to the judges who are called upon to make initial rulings during the course of a trial. The ultimate answer may soon be found when this question is presented to the highest court of our land for determination . . ."

According to a summary in law week, the Pennsylvania Supreme Court has stated in effect:

> "The law on the point in question is in a state of serious confusion with no apparent hope of en-

lightenment from the Supreme Court of the United States, in view of its action in refusing certiorari in cases reaching conflicting results." 34 Law Week 2196, published Oct. 12, 1965.

Law Week quotes the text of the opinion, as follows:

"While recognizing that in cases involving federal questions the United States Supreme Court is the ultimate arbiter, in view of the widespread confusion in this area of the law and the failure of the Supreme Court to clarify it, the decision of the Third Circuit Court of Appeals is on this matter, for all practical purposes, the ultimate forum in Pennsylvania. If the Pennsylvania courts refuse to abide by its conclusions, then the individual to whom we deny relief need only 'walk across the street' to gain a different result. Such an unfortunate situation would cause disrespect for the law. It would also result in adding to the already burdensome problems of the Commonwealth's trial courts, which look to us for guidance. Finality of judgments would become illusory, disposition of litigation prolonged for years, the business of the courts unnecessarily clogged, and justice intolerably delayed and frequently denied.

"Consequently, in order to alleviate and correct a regrettable situation, the clear indication for this court is to accept and follow the decision of the Third Circuit on this matter until some further word is spoken by the Supreme Court of the United States."

Conclusion.

It is respectfully submitted that the unseemly tensions and disagreements that presently cloak this important question of law and the proper interpretation of *Escobedo* make it appropriate for this court to speak in its role as the final arbiter of federal constitutional questions. Accordingly, we respectfully renew our request that certiorari should issue to review the decision below.

Respectfully submitted,

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